CH 66.

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W. P. NO.3326 OF 2003

PETITIONER

Shishupal Singh Chouhan S/o Late G. S. Chouhan, Aged about 58 years, Occupation-Service, posted As Accountant, Forest Forest Training School, Jagdalpur, District Bastar [Chhattisgarh]

V E R S U S

RESPONDENTS

P. R. No. 3190/03
Presented by Shri K.K. Rupesh Singh
dated 13.10.03

1. The State of Chhattisgarh Through the Secretary, Department of Forest, Mantralaya, Dau Kalyan Singh Bhawan, Raipur [Chhattisgarh]

2. The Conservator of Forest, Jagdalpur Circle, Jagdalpur [Chhattisgarh]

3. The Conservator-in-Chief Administration [Non-Gazetted], Chhattisgarh, Raipur [Chhattisgarh]

4. Shri B. M. Garg, Director Forest Training School, Jagdalpur & the Enquiry Officer, Jagdalpur [C.G.]

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

The petitioner above-named most respectfully submits as under:

1. **PARTICULARS OF THE PETITIONER:**

As mentioned in the Cause Title above.

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 3326 of 2003

Petitioner : Shishupal Singh Chouhan

Versus

Respondents : The State of Chhattisgarh & others

Shri Amit Verma, counsel for the petitioner.

Shri V.V.S. Moorthy, Deputy Advocate General with Smt. Anju Ahuja, Deputy Government Advocate for the respondents.

ORAL ORDER

(24th July, 2006)

1. Learned counsel appearing for the petitioner submits that the petitioner, working as Accountant in the office of the Forest Training School, Jagdalpur, was served the charge-sheet for certain allegations against him. During pendency of the enquiry, the petitioner was placed under suspension by order dated 12.7.2002 (Annexure P/5). Thereafter, one Shri B.M. Garg, Director, Forest Training School, Jagdalpur was appointed as Enquiry Officer by order dated 13.1.2003 (Annexure P/13) in the departmental enquiry instituted against him.
2. The petitioner has filed this petition praying that the suspension order dated 12.7.2002 (Annexure P/5) and the order dated 13.1.2003 (Annexure P/13) appointing Shri B.M. Garg as Enquiry Officer be quashed.

3. Learned counsel appearing for the respondents/State submits that Shri B.M. Garg, who was appointed as enquiry officer by order dated 13.1.2003 (Annexure P/13), has been retired and new enquiry officer has been appointed and as such challenge to the order dated 13.1.2003 has become infructuous, to which learned counsel appearing for the petitioner does not dispute the fact.
4. With regard to the suspension order dated 12.7.2002, it is submitted by learned counsel for the petitioner that more than 8 months had passed before the charge-sheet was supplied to the petitioner.
5. Learned counsel relies on Sub Rule (2-a) of Rule 9 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'the Rules, 1966') in support of his contention that if the charges along with other documents are not served within a period of 90 days, the suspension period be set aside.
6. Learned counsel for the respondents/State submits that the charge-sheet was issued on 23.8.2002 within a period of 45 days. The same was served on the petitioner by affixing the same on the residence of the petitioner. The petitioner remained absent on account of some medical problem. Remaining absence on the part of delinquent employee cannot be the ground for delayed service of the charge-sheet. Admittedly, the charge-sheet was served on 23.8.2002.
7. Be that as it may, the petitioner has not been able to establish that the petitioner remained present throughout

either in his residence or at the place of his work and the charge-sheet was not served on him. This is the case of the petitioner that he remained out of his residence on account of medical treatment and as such the service of the charge-sheet cannot be treated as delayed after 90 days. Now, the enquiry has been initiated.

8. The petitioner may prefer a representation to the authorities for quashing of his suspension order on legally permissible grounds. In the facts and circumstances of the case when the service could not be affected on account of absence of the petitioner, the suspension order cannot be quashed.

9. For the reasons stated-above, this petition stands disposed of. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu